

The Uninsured Employers' Fund ("UEF" hereafter) asks the Utah Labor Commission to review Administrative Law Judge Hann's determination that the UEF is liable for benefits paid to R. C. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On February 12, 2004, Mr. C. filed an application with the Commission to obtain workers' compensation benefits for injuries suffered in a work-related accident on October 28, 2002. According to Mr. C.'s application, he was employed by Mr. Rents/Western State ("Mr. Rents") at the time of the accident.

On February 26, 2004, the Commission's Adjudication Division mailed its "Notice of Formal Adjudicative Proceeding & Order For Answer" to Mr. Rents and to American Employment Group ("AEG").¹ On March 30, 2004, AEG filed its answer to Mr. C.'s application. Among other things, AEG alleged that, at the time of Mr. C.'s accident, it was not Mr. C.'s employer. AEG further alleged that its staff leasing arrangement with Mr. Rents had ended on October 15, 2002, two weeks before Mr. C.'s accident. Mr. Rent filed no answer to Mr. C.'s application.

During August 2004, at Mr. C.'s request, the UEF was joined as a respondent to Mr. C.'s claim. The UEF filed its answer on September 15, 2004, generally denying Mr. C.'s claim, but also asserting that the UEF had "no information showing that the employer lacks sufficient funds to pay the claim in this matter."

Judge Hann held a formal evidentiary hearing on Mr. C.'s claim on March 16, 2005. Both Mr. C. and the UEF were represented by counsel. Philip Blomquist appeared on behalf of Mr. Rent, but stated that Mr. Rent had been involuntarily dissolved by the State of Utah and was no longer in business. AEG failed to appear for the hearing.

During the course of the hearing, the attendees agreed Mr. C. was entitled to workers' compensation benefits. Substantial discussion then ensued regarding liability for payment of those benefits. The UEF took the position that AEG was Mr. C.'s employer and, as such, had primary liability to pay benefits due Mr. C.. The UEF also agreed that Mr. Rent was not Mr. C.'s employer and could be dismissed from the proceeding. Finally, it appears that the UEF was aware that AEG did not have workers' compensation insurance and had stopped paying Mr. C.'s benefits.

¹ AEG is, or was, a staff leasing company that provided staff leasing services to Mr. Rents for some period of time.

Based on the parties' foregoing representations and agreements, Judge Hann entered an order on March 30, 2005, awarding benefits to Mr. C., finding AEG primarily liable for those benefits, but also finding that AEG lacked sufficient assets to pay the benefits. Judge Hann therefore ordered the UEF to pay Mr. C.'s benefits, with a right of recovery against AEG. On April 7, 2005, Judge Hann amended her order to correct the computation of Mr. C.'s benefits.

On April 29, 2005, the UEF filed a motion for review of Judge Hann's decision. Specifically, the UEF argued that Judge Hann erred in dismissing Mr. Rent from this adjudicative proceeding and in finding AEG unable to pay Mr. C.'s benefits.

DISCUSSION AND CONCLUSION OF LAW

Dismissal of Mr. Rent. The UEF contends Judge Hann erred in dismissing Mr. Rent as a respondent to Mr. C.'s claim. The Commission has reviewed the hearing record and notes that the UEF specifically stated to Judge Hann that AEG, and not Mr. Rent, was Mr. C.'s employer. The UEF also specifically agreed that Mr. Rent should be dismissed from this matter.

As is the case with any other party, the UEF is bound by representations made during a formal adjudicatory proceeding such as this, and Judge Hann was entitled to rely on the UEF's representations. The Commission therefore concurs with Judge Hann's dismissal of Mr. Rent.

UEF liability. The UEF correctly points out that AEG, as Mr. C.'s employer, has primary liability for Mr. C.'s workers' compensation benefits. It is also correct that the UEF cannot be ordered to pay Mr. C.'s benefits until it is established that AEG is unable to do so. However, during the evidentiary hearing in this matter, the UEF did not dispute the facts that AEG was uninsured, out of business, and had stopped paying Mr. C.'s benefits. In the face of this evidence of AEG's inability to pay, the UEF presented no evidence that AEG did, in fact, have the means to pay. Based on the evidence presented to her, Judge Hann correctly concluded that AEG could not pay Mr. C.'s benefits, thereby triggering the UEF's responsibility to do so.

ORDER

The Commission denies the UEF's motion for review and affirms Judge Hann's decision. It is so ordered.

Dated this 12th day of October, 2005.

R. Lee Ellertson, Commissioner